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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 489

L. C. SHELTON, AMERICO DETRES, SR., AS FATHER AND NATURAL GUARDIAN OF AMERICO, JR., A MINOR,
Petitioners,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION, AND COUNTY OF COOK, A BODY POLITIC AND CORPORATE,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

BRIEF FOR RESPONDENT IN OPPOSITION.

EDWARD V. HANRAHAN,
State's Attorney of Cook County, Illinois.
500 Chicago Civic Center,
Chicago, Illinois 60602,
321-8750,
Attorney for Respondent County of Cook.

DANIEL P. COMAN,
Chief of the Civil Division,
DEAN H. BILTON,
Assistant State's Attorney,
THOMAS E. BRANNIGAN,
Assistant State's Attorney,
Of Counsel.

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OPINION BELOW.

The opinion is correctly printed as Appendix B to the Petition for Writ of Certiorari. It is now in printed form at 148 N. E. 2d 121.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED.

The question presented is correctly set forth in the Petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

These are correctly stated in the Petition.

STATEMENT OF THE CASE.

The statement of the petitioners is correct. However, it should be noted that the Petitioners' complaints were based solely upon the operation of the Mob Action Statutes. These complaints did not allege a common law tort action against the Respondent County of Cook. There were no allegations in these complaints that Respondent County of Cook acted negligently or willfully to the detriment of the petitioners.

REASON FOR DENYING THE WRIT.

The Decision of the Illinois Supreme Court Is Consistent With Applicable Decisions of This Court.

In July 1966, the Petitioners were injured by mob action and at that time, they had available to them a statutory remedy of filing suits against the Respondents City and County. By virtue of the doctrine of absolute liability imposed by these statutes, the Petitioners could recover their damages. In August 1967, these statutes were repealed and that repealer has been held to operate retroactively. The Petitioners claim that this retroactivity has caused them to be unconstitutionally deprived of a vested right. This claim is without merit in that there is no vested right in any given mode of procedure. (*Denver & Rio*

Grande W. R. Co. v. *Brotherhood of Railway Trainmen,* 387 U. S. 556, 563.)

This Court has held that when statutory remedies are repealed without a savings clause, the repealer operates retrospectively so as to defeat causes of action already commenced. "And such laws operating with that effect have been upheld as against all objections on the ground that they deprive parties of vested rights or impair the obligation of contracts." (*Ewell* v. *Daggs,* 108 U. S. 143, 150.) Following this rule, other Courts have come to the same conclusion. In *National Carloading Corp.* v. *Phoenix-El Paso Express,* 142 Tex. 141, 176 S. W. 2d 564, 569, Cert. Den. 322 U. S. 747, that Court said,

> "The Courts are generally agreed that rights of action based upon purely statutory grounds may be abolished by the legislature even after they have occurred." (Cited cases including *Ewell* v. *Daggs.*)
>
> ". . . We think it therefore becomes evident that the plaintiff does not possess such a vested right as to come within the inhibition of the Fifth Amendment. Such a right must be something more than a mere expectation based upon an anticipated continuance of the existing law. It must have become a title, legal or equitable, to the present or future enjoyment of property, or to the present or future enforcement of a demand, or a legal exemption from the demand of another. If, before rights become vested in particular individuals, the convenience of the State induces amendment or repeal of the laws upon which they are based, these individuals are left without any remedy at law to enforce their claims; and if final relief has not been granted before the repeal goes into effect it cannot be granted thereafter, even if a judgment has been entered and the cause is pending upon appeal. The general rule is that when such law is repealed without a saving clause, it is considered, except as to transactions past and closed, as though it had never existed."

In addition to the foregoing general principles, this Court has specifically held that mob action remedies, such as the ones in question, are to be treated in the same manner as other statutory remedies. The case of *Louisiana* v. *Mayor of New Orleans*, 109 U. S. 286, was a mandamus suit to force the City of New Orleans to levy taxes at an old tax rate sufficient to pay the petitioners' judgments for mob action damages. The rate was lowered by the legislature subsequent to the entry of these judgments, and the judgments could not be satisfied by the new rate, whereas they could have been satisfied by the old rate. This Court in upholding this legislation said:

> "The right to reimbursement for damages caused by a mob or riotous assemblage of people is not found upon any contract between the City and the sufferers. Its liability for the damages is created by a law of the legislature, and can be withdrawn or limited at its pleasure." (109 U. S. 286, 287.)

Mr. Justice Bradley, concurring, said:

> "I concur in the judgment in this case on the special ground that remedies against municipal bodies for damages caused by mobs or other violators of law unconnected with the municipal government are purely matters of legislative policy, depending upon positive law, which may at any time be repealed or modified, either before or after the damage has occurred, and the repeal of which causes the remedy to cease. In giving or withholding remedies of this kind, it is simply a question whether the public shall or shall not indemnify those who sustain losses from the unlawful acts or combinations of individuals; and whether it shall, or shall not do so, is a matter of legislative discretion . . . And, as the judgments in the present case were founded upon a law giving this kind of remedy, I agree with the Court; that any restraint on taxation which may affect the means of enforcing them is within the constitutional powers of the legislature. Until the claim is reduced to pos-

session, it is subject to legislative regulation." (109 U. S. 287, 291.)

The respondent submits that the *Mayor of New Orleans* case is controlling in the instant case.

The petitioners claim to have been deprived of a right of redress without the substitution of any "effective" remedy. (Petition, p. 8.) This argument ignores the fact that the basic remedy given to anyone who is injured through wrongful conduct is a tort suit. Obviously, the petitioners have this remedy and can sue the persons who did the damage to the petitioners or who aided in any way to this injury.

The concurring opinion in the *Mayor of New Orleans* case (109 U. S. 286, 291), specifically exempts this common law remedy from the retroactive operation of the repealer of the statutory remedy. Whether this remedy is "effective" depends upon the usual problems connected with tort litigation. If the tortfeasor is identified, if there is sufficient evidence to prove the act, if the defendant is solvent, then the remedy is "effective". However, these are the problems of all plaintiffs, not just those injured in riots. What the instant plaintiff, the petitioners, had and lost was a special gift—a municipal corporation standing as an insurer to reimburse this particular category of injured persons. Clearly, the petitioners have no vested constitutional right to a continuation of this gift.

CONCLUSION.

For the foregoing reasons, it is respectfully requested that the Petition for Writ of Certiorari to the Illinois Supreme Court be denied.

Respectfully submitted,

EDWARD V. HANRAHAN,
State's Attorney of Cook County, Illinois.

DANIEL P. COMAN,
Chief of the Civil Division,

DEAN H. BILTON,
Assistant State's Attorney,

THOMAS E. BRANNIGAN,
Assistant State's Attorney,

Of Counsel.